

# Task Force on the Future for Growth and Development

## *Draft Recommendations - For Internal Discussion Only*

*(Revised November ~~9~~20, 2008)*

### Summary

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# **1. Modernize the State’s Planning Visions to Achieve Smart and Sustainable Growth**

## **A. Update the “Eight Visions” to Reflect a More Modern Approach to Growth and Development**

The “Eight Visions” were first adopted by Maryland in the 1992 Economic Growth, Resource Protection, and Planning Act. They were initially developed by the Year 2020 Panel of Experts, an inter-disciplinary group convened by the Chesapeake Bay Commission in 1987 to evaluate the impact of future growth in the Chesapeake Bay Region. The 2020 Panel issued its report in December 1988 and described six visions needed to strike a balance between growth and environmental needs. These were ultimately codified in 1992, with two additional visions for a total of eight.

State Finance and Procurement Article §5-7A-01 provides that the Eight Visions are Maryland’s “Economic Growth, Resources Protection and Planning Policy” (*i.e.*, the State’s growth policy). Section 5-7A-02 limits ~~state~~[State](#) funding for various capital projects unless the projects are consistent with this growth policy or “the local plan of the jurisdiction in which the project is located.”

The Visions are also incorporated in Article 66B (Land Use) §1.01 and apply to all counties and municipalities in Maryland. Local jurisdictions are required to implement the Visions through the plan. Further, §4.09 requires that jurisdictions “shall ensure that the implementation of the provisions of the plan that comply with §§1.01 and 3.05(a) (4)(vi) and (viii) [the land use and sensitive areas elements] are achieved through the adoption of applicable zoning ordinances...subdivision ordinances...and other land use ordinances...that are consistent with the plan.”

The Visions are a now-familiar touchstone of Maryland land use law and policy, but they have been in place without amendment for 16 years. They have never been modernized to reflect and keep pace with current growth and development patterns and trends, or Maryland’s commitment to Smart Growth. It quickly became clear to the Task Force that the Visions should be updated and, through its Eight Visions Workgroup, the Task Force drafted, discussed and now recommends a new set of Visions to guide growth and development in Maryland to help achieve Smart and Sustainable Growth.

Following are the existing and the proposed revised Visions:

1 **The Existing Eight Visions**  
2 **(pursuant to Economic Growth, Resource Protection, and Planning Act of 1992)**  
3

- 4 1. Development is concentrated in suitable areas;
- 5 2. Sensitive Areas are protected;
- 6 3. In rural areas, growth is directed to existing population centers and resource areas are  
7 protected;
- 8 4. Stewardship of the Chesapeake Bay and the land is a universal ethic;
- 9 5. Conservation of resources, including a reduction in resource consumption, is practiced;
- 10 6. To assure the achievement of [the] above, economic growth is encouraged and  
11 regulatory mechanisms are streamlined;
- 12 7. Adequate public facilities and infrastructure under the control of the county or  
13 municipal corporation are available or planned in areas where growth is to occur; and
- 14 8. Funding mechanisms are addressed to achieve these visions.

15  
16  
17 **Proposed Revised Visions**

- 18 1. **Quality of Life and Sustainability:** A high quality of life is achieved through universal  
19 stewardship of the land, water and air resulting in sustainable communities and protection  
20 of the environment.
- 21 2. **Public Participation:** Citizens are active partners in the planning and implementation of  
22 community initiatives and are sensitive to their responsibilities in achieving community  
23 goals.
- 24 3. **Growth Areas:** Growth is concentrated in existing population and business centers,  
25 growth areas adjacent to these centers, or strategically selected new centers.
- 26 4. **Community Design:** Compact, mixed-use, walkable design consistent with existing  
27 community character and located near available or planned transit options is encouraged to  
28 ensure efficient use of land and transportation resources and preservation and enhancement  
29 of natural systems, open spaces, recreational areas, and historical, cultural, and  
30 archeological resources.
- 31 5. **Infrastructure:** Growth areas have the water resources and infrastructure to  
32 accommodate population and business expansion in an orderly, efficient, and  
33 environmentally sustainable manner.
- 34 6. **Transportation:** A well-maintained, multimodal transportation system facilitates the safe,  
35 convenient, affordable and efficient movement of people, goods and services within and  
36 between population and business centers.
- 37 7. **Housing:** A range of housing densities, types, and sizes ~~provide~~provides residential  
38 options for citizens of all ages and incomes.
- 39 8. **Economic Development:** Economic development and natural resource-based businesses  
40 that promote employment opportunities for all income levels within the capacity of the  
41 State's natural resources, public services, and public facilities ~~is~~are encouraged.

9. **Environmental Protection:** Land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems and living resources.
10. **Resource Conservation:** Waterways, forests, agricultural areas, open space, natural systems and scenic areas are conserved.
11. **Stewardship:** Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
12. **Implementation:** Strategies, policies, programs and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State and interstate levels to achieve these visions.

The Visions are incorporated in ~~state~~[State](#) statutes, and therefore updating and amending the Visions will require legislation. Once the Visions are updated, local governments would be required to comply with them as part of their comprehensive plan update cycle, including any ensuing revisions of local land use ordinances. Of equal importance, the State Development Plan now being prepared by the State would need to incorporate the revised Visions, and State agencies would begin to evaluate programs and policies for compliance with the updated language of the proposed Visions.

**The Task Force believes the revised Visions are more consistent with, and will further, Maryland's ongoing aspiration to develop and implement sound growth and development policy -- particularly Smart and Sustainable Growth. It recommends the enactment of legislation adopting these new Visions the 2009 General Assembly session.**

## **2. Strengthen Comprehensive Plans**

### **A. The General Assembly should respond to the recent Terrapin Run case with corrective legislation**

The opinions of the Court of Appeals in *Trail, et al. v. Terrapin Run, LLC, et al.*, No. 44, September Term, 2007 (March 11, 2008) contains a wide-ranging discussion of the history of planning in Maryland and the role of a local jurisdiction's comprehensive plan. After analysis by its Terrapin Run Workgroup, the Task Force concluded that the overall effect of the opinion is to weaken the link between the comprehensive plan and its implementing ordinances such as zoning. See the Report of the Terrapin Run Workgroup at [Appendix \[ \]](#) for a summary and analysis of the court's opinion. With increasing growth pressures in Maryland, planning issues have increased in complexity, and local governments and citizens are investing more of their time and resources in comprehensive plans. The opinion from Terrapin Run would devalue that significant government and citizen investment.

1 At a minimum, the Terrapin Run decision did not consider Section 4.09 of Article 66B which  
2 requires that “a local jurisdiction shall ensure that the implementation of the provisions of the  
3 plan...are achieved through the adoption of applicable zoning ordinances and regulations, planned  
4 development ordinances and regulations, subdivision ordinances and regulations, and other land  
5 use ordinances and regulations that are consistent with the plan.” The comprehensive plan is also  
6 required to be reviewed at least once every six years and, if necessary, ~~revise~~ revised or ~~amend the~~  
7 ~~plan~~ amended. In addition, ~~at intervals that correspond to the plan revisions~~, the local jurisdiction is  
8 to ensure that the plan is implemented through land use ordinances and regulations that are  
9 consistent with the plan.

10 The advantages of a comprehensive plan are apparent. First, the comprehensive plan is prepared  
11 by professionals along with the planning commission or board, who are able to objectively  
12 evaluate population projections, economic factors, resource limitations, and environmental  
13 protection. Second, the process involves numerous stakeholders and is open to the public. It  
14 represents the application of State-established planning criteria to the particular circumstances of  
15 the local jurisdiction by the local jurisdiction. It represents the broad vision of the people of the  
16 jurisdiction for their future. Third, although the plan can be revised more frequently, its 6-year  
17 lifetime virtually assures that it will survive through changes of administration and the  
18 membership of the local legislative body. This longer-term planning horizon reduces uncertainty  
19 and facilitates the coordination of development with the necessary infrastructure.

20 Maryland is best served if all land use decisions conform to the overall comprehensive plan in both  
21 the location and timing of development. Development of property consistent with the locally  
22 developed and adopted comprehensive plan is mandated by statute, it is achievable, and it is good  
23 policy. Accordingly, The Task Force believes that the General Assembly should clarify this, by  
24 passage of appropriate legislation.

25 **The Task Force recommends amending Article 66B to remove any ambiguity created by**  
26 ***Terrapin Run* and clarify that a local jurisdiction must implement and follow the**  
27 **comprehensive plan it adopts, as contemplated by the State’s Economic Growth, Resource**  
28 **Protection, and Planning Act of 1992. Any such amendment should be tailored ~~narrowly~~, to**  
29 **avoid unintended consequences within Article 66B or other areas of the State’s planning**  
30 **laws, and to preserve the distinction between the comprehensive plan as an overarching**  
31 **policy document and land use ordinances and regulations that implement it.**

32 ***B. Provide earlier opportunities for State agency comment on local comprehensive plans***

33 For decades, MDP has led a formal process to review and comment upon local governments’  
34 comprehensive plans. Currently, that comment period is statutorily required 60 days before the  
35 local plan is adopted. The process, and the ultimate purposes of such review, would be enhanced  
36 by the addition of an informal meeting and preliminary comment step earlier in the comprehensive

plan development process. Such a meeting would provide an opportunity for more collaboration and for better incorporation of comments into the plan.

**The Task Force recommends that MDP, in coordination with each local government, adopt a policy for meeting early in the comprehensive plan development process to coordinate and collaborate about the jurisdiction's comprehensive plan, and to facilitate the incorporation of State comments into the plan, to the greatest extent possible, before its adoption.**

**C. Increase technical and financial support for local comprehensive planning, particularly in smaller communities with limited capacity**

Many local governments need technical and/or financial assistance to develop and implement their comprehensive plans. MDP and other State agencies provide various forms of technical assistance to all local governments. This includes information on best practices, data and analysis, interpretation of policies and laws, etc. As planning issues in Maryland have become more complex and as new ~~requirements for planning add~~ required chapters or elements have been added to comprehensive plans, the need for technical assistance has increased. At the same time, the State's ability to provide additional technical assistance is limited, with key financial assistance available mostly to smaller jurisdictions. One new effort initiated by a collaboration of State agencies, the Sustainable Communities Initiative, was designed to address these issues ~~to help by helping~~ lower income communities afford consulting support for comprehensive planning, but this program alone is not enough.

**The Task Force recommends that the State identify additional resources for providing technical and/or financial assistance to local governments for development and implementation of their comprehensive plans. Existing non-profit and university resources should be examined as potentially efficient ways to provide such assistance. Currently, some counties are providing planning assistance to their municipalities, and such voluntary planning collaboration should be encouraged.**

### **3. Collect Good Information for Good Planning**

Advancement and achievement of public policy objectives like Smart and Sustainable Growth are helped by the application and analysis of broadly accepted and reliable information about goals, indicators, trends, forecasts and the like (*i.e.*, metrics). Despite its critical importance, little comprehensive quantitative information exists to measure how Maryland is growing at the state, regional, and at times local levels. While some measures or indicators exist statewide, additional ones are needed.

Measures or indicators should address at least the following:

- Amount and share of growth in and out of PFAs
- Density mix of growth in and out of PFAs
- Measures of housing choice, including affordability
- Measures of growth's impact on the environment (land, water, air and habitat)
- Indicators informing the fiscal cost of growth
- [Agricultural preservation](#)
- [Development capacity analysis](#)
- Jobs/housing balance
- Measures or indicators to inform the transportation impact of growth
- Indicators on growth's impact on business (job creation, fiscal impact, agri-business, tourism, forestry etc.)
- Indicators on growth's impacts to cultural and historic resources
- Measures or indicators on reporting the creation of new lots and building permits in and out of the PFA

**The Task Force recommends that MDP work with local governments and other stakeholders, including the Task Force itself, to jointly develop a set of Smart and Sustainable Growth indicators that can be used at the local, regional and state levels. The Task Force recognizes that achievement versus these indicators will necessarily vary because of regional and other distinctions among local jurisdictions. Drafts of these indicators should be shared with the Task Force by July 1, 2009 for review and comment.**

#### **4. Sharpen the Focus of Priority Funding Areas (PFAs)**

##### **A. Target State resources within the existing Priority Funding Areas to move Smart Growth forward and to improve the State's return on investment**

The fundamental purpose of Priority Funding Areas (PFAs), established by law in 1997, is to focus State spending to most efficiently and effectively use existing infrastructure, preserve existing neighborhoods, and preserve Maryland's fields, farms, and open spaces. By statute, PFAs include:

- Municipal boundaries as of January 1997
- Designated Neighborhood Program Areas



- Enterprise Zones
- Heritage Areas that are also county growth areas
- ~~Inside~~Area inside the Beltways

• ~~Local Governments MAY~~By statute, local governments may also certify additional areas consistent with stated criteria ~~(, as local growth areas)~~.

Certain criteria must be met in order for an area to be a certified PFA -- existing or planned water and sewer service, average permitted residential density of 3.5 units per acre, growth plan consistent with projections, and a PFA size based on an assessment of land needed for 20 years' growth.

Like the "Eight Visions" passed in 1992, the 1997 PFA law has never been substantially changed or updated in view of evolving growth and development issues. Yet, PFAs are in many ways the lynchpin of the State's growth policy because ~~of their direct effect on~~they directly affect where the State can and does spend its money in support of growth.

A PFA Workgroup of the Task Force met to evaluate the efficacy of the PFAs, and it quickly became clear that this multifaceted and complex issue could not be addressed effectively within the limited time prior to delivery of this mandated report. [DESCRIBE HERE FOR THE READER THE ISSUES CONSIDERED AND THE DIVERGENCE OF INTERESTS WITH RESPECT TO PFAs, AS IDENTIFIED BY THE WORKGROUP]. ~~However~~Following is a brief summary of the issues the Workgroup identified.

Stakeholder perspectives on the performance of PFAs vary extensively. Because all land within incorporated municipalities before 1997 were automatically included within PFAs, the Maryland Municipal League (MML) is largely satisfied with PFAs as they currently exist, although MML would support extending PFAs to include growth areas established under HB1141. The Maryland Association of Counties (MACo) would prefer more flexibility in the criteria used to establish PFAs and, perhaps, requiring PFAs to be coterminous with growth areas designated in comprehensive plans. The environmental community is most concerned with tightening restrictions on development outside PFAs, while the development community is most concerned with removing barriers to development inside PFAs. The Maryland Department of Planning is resistant to eliminating the criteria that establish PFAs but supports policies that would both increase restrictions on development outside PFAs and decrease impediments to development inside PFAs. Every stakeholder group supports the idea of reconsidering the process through which State funds are restricted for projects inside PFAs; this includes the reexamining the set of programs subject to PFA review, the process of exceptions and appeals, and the criteria that warrant PFA review and merit a successful appeal.

Discussions among the PFA workgroup addressed proposals that would redefine the criteria for establishing PFAs, creating additional disincentives for development outside PFAs, and creating additional incentives for development inside PFAs. Ideas for redefining criteria for establishing

PFAs focused on trying to make PFAs consistent with growth areas in comprehensive plans. Ideas for creating additional disincentives for development outside PFAs included proposals to downzone land outside PFAs, imposing a development tax outside PFAs, and requiring the adoption of best available technologies on septic systems outside PFAs. Proposals for strengthening incentives for development inside PFAs included the establishment of PFA tiers in which particular regions within PFAs would receive even higher priority for funding under existing State programs. Perhaps because there was no clear consensus on the problem with existing PFAs, however, there was no consensus on which, if any, of these proposals for improving the performance of PFAs might be pursued or adopted.

Nonetheless, because the PFAs are so central to the State's growth and development policy, their intent, performance and efficacy must be fully evaluated, understood and improved, to the extent necessary and possible. **Therefore, the Task Force will make study of PFAs a Focus Area of its ongoing work, with the goal and intent of providing by November 1, 2009 a critical analysis of the effectiveness of PFAs along with recommendations for possible changes.**

## **5. Emphasize Transit-Oriented Development (TOD)**

Maryland has a unique opportunity to leverage existing transit investment and promote more efficient land use through encouraging compact, mixed use development near its transit stations. This approach, known as "Transit-Oriented Development" or "TOD," can be pursued as a mechanism to promote transportation choice for many Maryland residents and provide a major focus for the accommodation of future growth in the ~~state~~State. TOD sites are often considered the best Smart Growth sites.

A TOD approach leverages the locational advantages of station areas by improving non-motorized access and clustering a mix of uses to reduce the number of trips that must be taken by automobile. Supported by transportation-demand management (TDM) strategies that change travel behavior (how, when and where people travel), TOD can help increase the overall efficiency of the ~~state~~State's transportation system, while providing an essential framework for more sustainable growth in the ~~state~~State. The approach can result in substantial quality of life improvements for Maryland households by cutting transportation and commuting time costs associated with the ownership and operation of vehicles, while promoting the development of more livable communities for current and future ~~state~~State residents.

Although Maryland's transit network provides a relatively high quality service, our current land use patterns do not provide for ~~its~~the most efficient use of transit. All too often, patrons have little choice but to access the transit network by car, and stations are surrounded by inefficient surface parking lots that render station areas unattractive and unsafe for pedestrians. ~~Many of the~~The State's existing transit station areas hold tremendous opportunity for infill and revitalization that could be a major focus for the ~~state~~State's future growth. Indeed, if our existing station areas were

1 developed (within half mile radius) to maximize their TOD potential, they could theoretically  
2 accommodate all of the ~~state~~State's projected growth for the next 20 years. Although realistically  
3 station areas and transit capacity must be planned to accommodate appropriate levels of growth for  
4 their area, the potential cost-savings, system efficiencies and quality of life improvements of TOD  
5 suggest that this approach could play a major role in accommodating the ~~state~~State's future  
6 growth.

7 Despite large transit investments, and our status as the fifth most densely populated state in the  
8 nation, Maryland continues to have a much higher share of travel by automobile than it does for  
9 public transit. The U.S. Census Bureau found that on average Marylanders have the ~~2<sup>nd</sup>~~  
10 second-worst commutes in the nation. Recent spikes in gasoline prices have prompted many  
11 Marylanders to consider public transit seriously for the first time. In addition, there is an  
12 increasing awareness across Maryland of the environmental consequences of auto travel. This  
13 includes traffic congestion that wastes valuable time and energy and produce pollution that harms  
14 our health and contributes to global warming. However, many of ~~the State~~Maryland's would be  
15 transit-riders quickly face the limitations of our current transit system, and their frustration returns  
16 them to their cars.

17  
18 The relationship between transportation and land use presents a special Smart Growth challenge.  
19 Smart Growth development patterns are important for efficient transportation; yet, such  
20 development patterns are difficult to achieve without good transportation options. Similarly,  
21 transportation services, especially transit service, are compromised by dispersed development  
22 patterns that make efficient transit services difficult to deliver. Therefore, good transportation  
23 service and good land use policy depend on each other to succeed.

24  
25 The Task Force sees great promise in TOD and in Maryland's public transit system to make  
26 increasingly more vital contributions toward feasible alternatives to auto travel, thereby relieving  
27 traffic congestion, reducing our dependence on oil, curbing pollution, stimulating the economy,  
28 and helping to sustain healthy, vibrant communities.

29  
30 **Accordingly, the Task Force supports TOD as a key State policy initiative and makes the**  
31 **following specific recommendations in support of TOD:**

- 32  
33 • **The State ~~agencies~~ and local governments should work cooperatively to promote**  
34 **appropriate levels of development at existing transit station areas.** ~~Stations~~  
35 ~~should be a~~ **to support and utilize the significant public investments in this**  
36 **expensive infrastructure. Existing transit stations should be the first** focus of  
37 **state-local collaboration** ~~to ensure that they can accommodate a major~~  
38 ~~proportion of Maryland's future growth and that associated land use changes~~  
39 ~~support investments in the improvement and expansion of the transit network.~~

- Study feasible public interventions, both fiscal and programmatic, required to support increased capacity for Maryland's future growth. Specifically, study the feasibility and relationship of system and site-level investments required to support focused growth around MD-Maryland's existing transit network. The opportunities and barriers for such investments should be identified and investigated. This activity must involve active participation from both local and stateState agencies and, as well as other stakeholders.
- The State should encourage compact development and mixed land uses in PFAs around transit areas. Local governments should respond by providing policy, programmatic, and regulatory frameworks that support development patterns that are walkable and transit supportive, and within a reasonable walking distance (typically 1/2 mile) of existing transit service. These measures ~~can~~should in turn promote mixed-income housing, employment and transportation alternatives that are more efficient, affordable and cost-effective. Substantial State incentives may be required to achieve these outcomes.
- ~~Link eligibility of~~ State TOD incentives should be provided to local ~~government adoption of~~ governments that adopt TOD-friendly planning, zoning, TOD supportive infrastructure policies and financing, TOD supportive housing programs, design and/or other measures that enable and permit high-quality TOD within existing transit station areas.
- Support local government adoption of TOD-friendly planning, zoning, and infrastructure investment. ~~Agencies~~ State agencies can assist through the development of TOD-supportive housing programs, model zoning codes and ~~assisting in the local development of~~ technical assistance to define community-appropriate, customized solutions that promote active, income-diverse, pedestrian- and transit-friendly communities.
- Create a capitalized TOD Revolving Loan Fund ~~for~~ to provide gap financing for TODs. This program ~~could~~ might be administered similarly to the DHCD ~~program for~~ Neighborhood Business Development Programs Program, which incentivizes the creation of small business in targeted community revitalization areas.
- Define & implement a program for financing bicycle & pedestrian facilities in all TODs, and for financing structured parking for TODs where necessary to encourage redevelopment of surface lots. The Maryland Transportation Authority could act as the financing agency.
- Provide the State's full faith and credit to TOD-zone TIF districts.

- 1  
2       • ~~Continue to communicate that TOD (where available) is one of the best ways to~~  
3       ~~accommodate future growth and to revitalize our existing communities, and how~~  
4       ~~that contrasts with low density sprawl development on rural land as a poor way~~  
5       ~~for Maryland to grow.~~  
6  
7

## 8   **6. Preserve Land for Resource Production and Protection**

9   Maryland is the fifth most densely populated state in the country, ~~but~~yet the State has also made  
10 protection of rural lands a priority, both to preserve natural resources and the industries ~~which~~that  
11 depend upon them. Directing development to growth areas and away from rural areas is critical to  
12 the protection of habitat, streams, rivers and the Bays, and equally important for the continued  
13 viability of Maryland's agri-business, seafood and tourism industries.

14 Maryland has the sixth most expensive farmland in the country. Even in difficult economic times,  
15 the average price for farmland in Maryland, according to the U.S. Department of Agriculture, is  
16 \$9,100 an acre in 2008. Because a significant portion of our farmland is within commuting  
17 distance of urban and suburban job centers, development pressure on this land is intense. With an  
18 aging farmer population and increasing real estate prices, remaining farmland in Maryland and the  
19 agriculture industry is threatened.

20 To help address this problem, the General Assembly passed a joint resolution in 2002 setting a  
21 goal to preserve 1,030,000 acres in Maryland. To date, the Maryland Agricultural Land  
22 Preservation Foundation (MALPF), the Rural Legacy program, and local Purchase of  
23 Development Rights and Transfer of Development Rights programs have placed under protective  
24 easement about half that stated amount.

25 Additionally, in 2006 the General Assembly passed HB2, which requires counties to have a  
26 Priority Preservation Plan (PPA). A PPA includes the geographic delineation of areas that are  
27 targeted for resource conservation preservation. HB2 also expressed the intent of the General  
28 Assembly to commit \$20 million in additional funding for agricultural preservation "to the extent  
29 the funds are available". To date, funding at this level has not been provided.

30 For Maryland to meet the challenge of growing while preserving the pastoral heritage of its rural  
31 areas, the State should actively support programs to assist farm, forestry, seafood and  
32 recreation-based businesses to achieve profitability and sustainability.

33 The following ~~are~~ recommendations ~~for addressing~~seek to address this challenge.

34 A. Protect funding for Maryland's land protection programs and also ensure that their sources  
35 are not diverted to other uses

1 Maryland's critical land protection programs described above depend substantially on revenues  
2 from the State's real estate transfer tax and agricultural transfer tax. In a declining real estate  
3 market, revenues from these taxes are reduced, threatening funding for these programs. In  
4 addition, although the current administration has not done so, prior administrations have diverted  
5 these revenues to the general fund to be used for other purposes.

6 Recognizing that the State's financial commitment to its land preservation programs is  
7 essential to their success, the Task Force recommends that the State maximize available  
8 resources for important preservation programs including the Critical Farms Program, the  
9 Next Generation Farmland Program, the Installment Purchase Agreement Program, the  
10 Maryland Agricultural Land Preservation Program, the Rural Legacy Program, and  
11 Program Open Space. The Task Force strongly encourages that funding sources for land  
12 protection and preservation be protected and never diverted to other uses.

### 13 *B. Target Land Preservation Programs*

14 The need for land preservation will always exceed the amount of public funds dedicated to that  
15 purpose, and current economic conditions and trends will exacerbate this problem. Therefore,  
16 resources should be targeted where possible to maximize return on the State's investment.

17 As noted above, in 2006 the General Assembly passed HB2, which requires counties to have a  
18 Priority Preservation Plan focused on designated Priority Preservation Areas (PPAs) which  
19 include the geographic delineation of areas that are targeted for resource conservation or  
20 preservation. A priority preservation area analysis assesses the status, vulnerability, threat and  
21 potential return on conservation investment in potential focus areas to do the following:

- 22 • Develop short- and long-term geographic and resource-specific objectives for land  
23 preservation and conservation in potential focus areas, based on the extent and  
24 configuration of land areas needed to sustain resources of interest;
- 25 • Evaluate the degree to which local land use management tools support achievement of  
26 those objectives in each area;
- 27 • Communicate conservation objectives and the strengths and weaknesses identified for  
28 supporting programs in an area; and
- 29 • Use the priority preservation area assessment and consultations with local government to  
30 select focus areas for the longer term, where resource-specific objectives are most likely to  
31 be achievable in those time frames.

32  
33 Such targeting provides a good opportunity to enhance resource conservation efforts by applying  
34 the priority preservation area concept to target not just individual parcels, but large geographic  
35 areas rich in high quality natural resources that also benefit from the stabilizing effects of local  
36 zoning and land use management authority.



1 The State should concentrate its expenditures for land preservation programs where the  
2 substantial investment is also protected by local land use management authority such as  
3 zoning, subdivision regulations, and Priority Preservation Areas.

4 *C. Support agricultural land preservation initiatives that protect resource-based industries*

5 While Maryland is a national leader in land preservation programs, State and local purchase of  
6 land for preservation (via fee simple or preservation easement) alone will not save Maryland's  
7 rural lands. These programs need to be augmented by land management tools such as protective  
8 rural zoning and subdivision regulations. In addition, resource-based industries such as  
9 agriculture, forestry, recreation, and tourism need to be vibrant in order to help decrease the  
10 incentive for property owners to sell their rural lands to developers for sprawl development. The  
11 loss of rural land to development and the resulting fragmentation of the landscape are damaging to  
12 resource-based industries and to the environment.

13 The Task Force recommends that the State and local governments look at comprehensive  
14 approaches to land preservation, beyond purchasing land for preservation. This approach  
15 should strengthen land management tools (e.g., protective rural zoning and subdivision  
16 regulations) for rural lands and strengthen existing resource-based industries, thereby  
17 decreasing the incentive for land owners to sell their land for development.

18 *D. Explore Expansion of Transfer of Development Rights (TDR) Programs*

19 Ownership of a parcel of land confers upon its owner a number of rights, including the right to use  
20 the property for one or more purposes, the right to cover a certain percentage of the site with  
21 buildings, and the right to develop a certain number of dwelling units. A TDR program allows  
22 these development rights to be acquired and transferred to another property, thereby protecting the  
23 “sending” property from development and allowing more development on the “receiving”  
24 property, typically in an area where growth is desirable and being directed.

25 ~~TDR is not permissible by right, but State authorization permits TDR to occur within a program~~  
26 ~~enacted voluntarily by the local government~~ State law authorizes local jurisdictions to enact TDR  
27 programs voluntarily. Few local jurisdictions have done so, however, because of the complexity  
28 of TDR programs. Only two jurisdictions that have TDR programs, Montgomery and Calvert  
29 Counties, have been able to create successful programs ~~which~~ that have preserved land while  
30 creating viable markets for the transferred densities.

31 TDR programs are not a substitute for strong rural zoning that independently protects such lands.  
32 However, despite the difficulties associated with creating viable TDR programs, particularly those  
33 that transfer rights across jurisdictional boundaries, the Task Force believes that further study of  
34 TDR viability is warranted. Though difficult to design and implement, a statewide or regionally  
35 based TDR program holds promise because such programs yield broader “receiving” areas for the  
36 transferred density.

The Task Force recommends that an inter-agency and inter-governmental workgroup, including State and local stakeholders, be convened to explore the viability of TDR programs at all levels. The workgroup should report back to the Task Force with an interim report by July 1, 2009, and a final report by November 1, 2009.

**B. Target Land Preservation Programs**

~~Financial resources for land preservation will always be limited, even more so as the State copes with the current fiscal climate. Therefore, resources should be targeted where possible to maximize return on the State's investment.~~

~~In 2006 the General Assembly passed HB2, which requires counties to have a Priority Preservation Plan focused on designated Priority Preservation Areas (PPAs). A PPA includes the geographic delineation of areas that are targeted for resource conservation preservation. A priority preservation area analysis assesses the status, vulnerability, threat and potential return on conservation investment in potential focus areas to do the following:~~

- ~~• Develop short and long term geographic and resource specific objectives for land preservation and conservation in potential focus areas, based on the extent and configuration of land areas needed to sustain resources of interest;~~
- ~~• Evaluate the degree to which local land use management tools support achievement of those objectives in each area;~~
- ~~• Communicate conservation objectives and the strengths and weaknesses identified for supporting programs in an area; and~~
- ~~• Use the priority preservation area assessment and consultations with local government to select focus areas for the longer term, where resource specific objectives are most likely to be achievable in those time frames.~~

~~Such targeting provides a good opportunity to enhance resource conservation efforts by applying the priority preservation area concept to target not just individual parcels but large geographic areas rich in high quality natural resources that also benefit from the stabilizing effects of local zoning and land use management authority.~~

~~The Task Force recommends that the State maximize available resources for important preservation programs including the Critical Farms Program, the Next Generation Farmland Program, the Installment Purchase Agreement Program, the Maryland Agricultural Land Preservation Program, the Rural Legacy Program, and Project Open Space. In addition, the State should concentrate its expenditures for land preservation programs where the substantial investment is protected by local land use management authority such as zoning, subdivision regulations, and Priority Preservation Areas.~~

**C. Support agricultural land preservation initiatives that protect resource-based industries**



~~In order to effectively conserve Maryland's resource lands, strong rural zoning is necessary to protect those resource lands from land fragmentation by keeping property in rural areas intact. One benefit of strong rural zoning can be higher property values. When rural lands are fragmented through subdivision the result is frequently the erosion of property values in comparison to what a property would be worth had it been left intact. Intact land provides for the continuation or beginning of resource-based industries.~~

~~The Maryland Agricultural Land Preservation Program (MALPF), in existence since 1977, is one of the most successful programs of its kind in the country. The goals of the program are to preserve land as a source for food and fiber for the citizens of Maryland; control the subdivision and development of farmland; curb the spread of urban blight and deterioration; and protect farm and forest land as open space. As of September 2008, MALPF has purchased perpetual preservation easements on nearly 2,000 farms, totaling 272,158 acres. MALPF has a long-term strategic plan that recommends several preservation initiatives.~~

~~The Maryland Agricultural and Resource Based Industry Development Corporation (MARBIDCO) was funded in the Ag Stewardship Act of 2006. Its primary goal is to provide the business assistance and financial help (i.e. loans and grants) that Ag and Resource Based Industries need to become profitable and sustainable. This quasi-government agency currently offers four business assistance loan programs and three grant programs as well as two land preservation programs. Although currently funded with state dollars, its mandate is to be self-sufficient by 2020. Adequate funding is required for MARBIDCO to reach its goal of self-sufficiency and to provide on-going assistance to resource-based industries in Maryland.~~

~~[INSERT RECOMMENDATION HERE]~~

~~**D. Protect funding for Maryland's land protection programs by ensuring that their sources are not diverted to other uses**~~

~~Maryland's critical land protection programs described above depend substantially on revenues from the State's real estate transfer tax and agricultural transfer tax. In a declining real estate market, revenues from these taxes are reduced, threatening funding for these programs. In addition, although the current administration has not done so, prior administrations have diverted these funds to the general fund to be used for other purposes.~~

~~**The Task Force strongly encourages that funds for land protection and preservation be maximized and, at the very least, not diverted to other uses.**~~

## **7. Assess and Address Critical Infrastructure Needs**

1 To achieve Smart and Sustainable Growth, we must build and maintain infrastructure in existing  
2 communities. The basics -- water, sewer, roads, and schools -- are absolute prerequisites for denser  
3 and more walkable communities. Libraries, parks, cultural/recreational and other similar facilities  
4 enrich our communities and are critical amenities ~~which~~that attract people to live where they do.  
5 Local, ~~state~~State and federal funds can meet only a small fraction of this demand.

6 An Infrastructure Assessment Workgroup of the Task Force studied a number of ~~critiesal~~critical  
7 infrastructure issues and provided the Task Force with a report. See the Workgroup's report at  
8 Appendix [ ]. Based on the Workgroup's report and further discussion, including the efforts of  
9 an Adequate Public Facilities Workgroup described further below, the Task Force makes the  
10 following recommendations to focus attention and resources on the State's infrastructure needs.

11 **A. Require that the Maryland Department of Planning update the 2004 Infrastructure Survey**  
12 **and that local governments cooperate with the survey**

13 The State last conducted a comprehensive survey of its infrastructure in 2004. This survey should  
14 be conducted at least every ten years to provide policymakers with a current understanding of the  
15 condition of Maryland's infrastructure. ~~and how that condition promotes or detracts from the~~  
16 State's ability to achieve Smart Growth priorities. The survey should identify infrastructure needs  
17 that are the highest priority for achieving Smart and Sustainable Growth..

18 **The Task Force recommends that MDP ~~should~~, in conjunction with other State agencies,**  
19 **local governments, and the Task Force, develop and implement changes to the 2004 survey**  
20 **format to maximize its usefulness for the purposes described. Local governments should ~~be~~**  
21 **~~encouraged to~~ participate fully in completing the survey, whose ~~usefulness~~utility will be**  
22 **compromised if data is incomplete.**

23 **B. Complete a ten-to-twenty year historical survey of State and local infrastructure investment**  
24 **for schools; land preservation including agricultural and open space protection; and**  
25 **transportation improvements**

26 The Task Force believes that ~~state~~State and local policymakers would benefit from a historical  
27 perspective on infrastructure funding in Maryland, both to identify past trends and help plan for  
28 future needs. Such a study should focus on spending, but also on the extent to which existing  
29 infrastructure is being used efficiently and to its capacity.

30 **The Task Force recommends that the Department of Legislative Services, the entity with**  
31 **access to the broadest spending and budget data, be asked to complete a historical**  
32 **infrastructure study by November 1, 2009, engaging the assistance and resources of other**  
33 **agencies and entities with access to relevant data and resources.**

34 **C. Expand the Department of Housing and Community Development's Local Government**  
35 **Infrastructure Finance Program**

1 The State's Local Government Infrastructure Financing Program, ~~run~~administered by the  
2 Department of Housing and Community Development (DHCD), issues bonds, on behalf of  
3 counties, municipalities and/or their agencies, to finance projects that serve the community at large.  
4 State issuance of such bonds helps smaller governments to achieve greater efficiency and lower  
5 cost than individual bond issuances.

6 Eligible projects can include, but are not limited to, streetscape improvements, transportation  
7 enhancements and water system and ~~waste-water~~wastewater treatment facilities. Bonds issued  
8 through the program are triple-A rated by virtue of municipal bond insurance and participants  
9 enjoy fixed, tax-exempt interest rates. Actual interest rates depend on market conditions at the time  
10 of sale, but depending on the size of the issue, economies of scale can further reduce issuance costs.  
11 Local governments receive loans from the bond proceeds and must repay the debt incurred through  
12 the bond financing. They also pay their pro-rata share of the costs of issuance of the pooled bonds.  
13 A loan is a general obligation of the participating jurisdiction, secured by the full faith, credit and  
14 taxing power of the local government.

15 Requests from local governments for assistance with municipal bond financing have nearly tripled  
16 from \$33 million in 2007 to more than \$100 million for 2008. Accordingly, DHCD is currently  
17 reviewing options for enhancing the reach of the Program as a means of making more funds  
18 available to meet infrastructure needs, although the cost of bond insurance in the current financial  
19 crisis is affecting all public finance. The Department is looking at other models for infrastructure  
20 investment, including the Virginia Resource Authority, which provides a similar service to the  
21 DHCD's Development's Local Government Infrastructure Finance Program but, at a larger scale.  
22 Virginia's program uses the backing of the Commonwealth's "moral obligation" to repay any  
23 municipal defaults; Maryland should consider the same, or even using its full faith and credit, to  
24 minimize costs of municipal financing for local partners.

25 **The Task Force supports DHCD's efforts to expand the Local Government Infrastructure**  
26 **Financing Program and requests that DHCD report to the Task Force, on an ongoing basis**  
27 **but no later than ~~April~~June 1, 2009, on the success of its efforts.**

28 **D. Maximize Local Government Authority to Fund Local Infrastructure Needs**

29 Maryland's charter counties have ample authority to impose any type of new tax or fee as long as  
30 State law does not preempt that tax or fee ~~is not preempted by state law~~. On the other hand, under  
31 the Maryland Constitution, a code county or a municipality must have express authority from the  
32 General Assembly to impose a tax or fee. For example, if a code county wanted to impose a  
33 transfer tax to fund infrastructure, the county would have to rely on the General Assembly to pass  
34 legislation authorizing the imposition of a transfer tax. ~~As a result, many~~Many code counties and  
35 the municipalities have been unsuccessful in persuading the General Assembly to authorize a new  
36 tax or fee.

1 In the area of financing, all counties and municipalities have the authority to adopt ordinances for  
2 tax increment financing for public infrastructure.

3 All counties have authority to establish special tax districts for ~~more~~-limited purposes such as  
4 providing drainage improvements or providing street lighting. In addition, charter counties have  
5 broad authority under the Express Powers Act to create special taxing districts to carry out most  
6 county services. However, authority to create special taxing district and to levy ad valorem taxes  
7 and issue bonds and other obligations for the purpose of financing infrastructure  
8 ~~improvements~~improvements is only authorized in eleven counties (Anne Arundel, Baltimore  
9 City, Calvert, Charles, Garrett, Harford, Howard, Prince George's, St. Mary's, Washington, and  
10 Wicomico). The type of infrastructure improvement authorized in special taxing districts include  
11 ~~storm drainage systems~~, water and sewer systems, roads, lighting, parking, parks and recreational  
12 facilities, libraries, schools, transit facilities and solid waste ~~facilities~~facilities. Municipal  
13 corporations have the authority to create special taxing districts and to levy ad valorem taxes.

14 **Particularly in view of the enormous demand for infrastructure and the practical limitations**  
15 **of the current financial climate, the State should provide counties and municipalities with**  
16 **the broadest possible authority for funding local infrastructure projects, including authority**  
17 **to use any reasonable tax, revenue source or financing vehicle. While the decision to use a**  
18 **particular tax or funding vehicle should always rest with local government, the State should**  
19 **continue to encourage local funding decisions that ~~prioritize infrastructure projects within~~**  
20 **~~PFA~~s are consistent with the State's Smart Growth policies.**

21 ***E. Improve the Effectiveness of Adequate Public Facilities Ordinances***

22 ~~In Maryland and elsewhere, essential~~Essential public facilities such as schools, roads, water, and  
23 sewer are necessary to ensure that communities are sustainable and, efficient communities. Often,  
24 paying for public facilities is not made a priority until current population demands attention be  
25 paid. The State authorizes local jurisdictions to enact Adequate Public Facilities Ordinances  
26 (APFOs), which condition development approvals under zoning and subdivision ordinances to  
27 meeting standards for public facilities such as roads, schools, water supply, sewage treatment,  
28 emergency services, libraries, ballfields and parks. Development cannot proceed until these  
29 standards are met.

30 The Task Force's APFO Workgroup was charged with assessing the impact of APFOs on growth  
31 patterns. See the Workgroup's report at ~~Appendix~~ [\_\_\_].

32 **After consideration of the APFO Workgroup report, the Task Force makes the following**  
33 **recommendations:**

34 **1. The State's planning laws (Article 66B) should be amended to:**  
35

- a) Require a local government that has an Adequate Public Facilities Ordinance (APFO) to ~~annually~~ report every two years to MDP ~~by July 1 if whether~~ the APFO results in an APFO restriction, moratorium, or capacity problem within a PFA. That report shall include the location of the restriction, type of infrastructure involved, and the estimated time for the resolution of the restriction.
  - b) Require MDP to prepare and publish a report every two years identifying geographic areas and facilities within PFAs that do not meet local APFO standards, and any improvements to those facilities that have been scheduled and/or proposed in the jurisdiction's Capital Improvement Program (CIP).
2. Jurisdictions should consider waiving APFO restrictions for workforce housing, affordable housing, and infill and revitalization projects within the PFA. Some jurisdictions already have waivers for these types of development. The final determination of waiver should be left to the local government, however.
  3. The State of Maryland should identify new funding sources to be used for infrastructure improvements within PFAs. State funding decisions should give high priority to infrastructure projects that remove reasonable APFO restrictions, moratoria, or other capacity problems that stop or limit development within PFAs or reimburse local governments for forward funding of these projects.
  4. The State should consider new sources of revenue to pay for State-funded infrastructure. ~~The Task Force recommends consideration be given to the following: an increase in the gas tax, indexing the gas tax to inflation, and a tax on vehicle miles travelled (VMT). Should any of these be adopted, it is imperative that the proceeds be dedicated exclusively to infrastructure. (The Task Force acknowledges that the Maryland Association of Counties, represented on the Task Force, does not endorse a VMT tax.)~~ to address APFO issues. An inter-agency and inter-governmental Workgroup should be convened to study alternative approaches to raising such revenues, with the results reported back to the Task Force by November 1, 2009 for further review and recommendations.
  5. ~~6.~~ Article 66B §11.01 should be amended to authorize local governments to establish a transfer of development rights program to facilitate the purchase of land for a school or other public facility within a PFA. Under this approach, the pre-existing development rights associated with property selected to become a school or other public facility could be sold to a third party, who would use those development rights to obtain increased density on land elsewhere within the community served by the school or public facility. Proceeds of the sale of development rights would be used to

1 help purchase the public site and/or construct the facility. (Article 66B §11.01  
2 currently provides that "a local legislative body that exercises authority granted by  
3 this article may establish a program for the transfer of development rights to: (1)  
4 Encourage the preservation of natural resources; and (2) Facilitate orderly growth  
5 and development in the State.")<sub>2</sub>

6  
7 6. ~~7.~~ Voluntary communication and cooperation among the counties, municipalities,  
8 and their local boards of education should be encouraged, especially with respect to  
9 growth and capacity issues. ~~A county and local board~~ Local jurisdictions and their  
10 boards of education should meet at least twice a year to discuss how the  
11 ~~county jurisdiction~~ and board will handle growth issues related to school capacity,  
12 student growth projections, and where possible, the siting of school facilities in a  
13 manner consistent with sound land use and public facilities planning.

14  
15 7. ~~8.~~ The State should work to increase the quality and quantity of demographic  
16 information available to school boards to better project trends in student population.  
17 Officials should use student generation rates based on actual experience and consider  
18 geographical differences. Officials at all levels should cooperate on strategies to  
19 increase enrollment at schools that are under capacity.

20  
21 8. ~~9.~~ MDP should prepare a study on the practicality of building vertical "urban"  
22 schools in the more densely built areas of PFAs. The study should also consider the  
23 practicality of making schools part of a mixed use or transit oriented development  
24 project and co-location of public facilities.

25  
26 9. ~~10.~~ The State should examine the adoption of a 6-year CIP for school construction,  
27 instead of the current 1-year, to give localities more predictability in funding.

28  
29 10. INSERT RECOMMENDATION FROM ORIGINAL APEO WORKGROUP  
30 RECOMMENDATION #8]

## 31 32 **8. Address Maryland's Housing Challenges**

### 33 ***A. Increase resources and activities to support affordable/workforce housing***

34 As home prices have increased substantially over the last years accompanied by rising  
35 construction costs, the resources available to support affordable housing activities at the ~~state~~ State  
36 and local levels have become stretched. Recent changes in the financial markets have lowered the  
37 value of some important existing tools, such as Low Income Housing Tax Credits (LIHTC).  
38 Expanded federal, ~~state~~ State, and local actions through budgetary commitments as well as  
39 regulatory actions are needed.

1 The Task Force recommends that the State:

- 2 • ~~develop~~Develop new funding sources to support Department of Housing and  
3 Community Development and Local Government affordable and workforce  
4 housing activities, complementing Congress's recent establishment of a  
5 National Housing Trust that may send additional resources to states by 2020.
- 6 • ~~work~~Work with Federal representatives to grow Federal formula-based  
7 housing and community development funds such as HOME, Community  
8 Development Block Grant (CDBG), Low Income Housing Tax Credits,  
9 Mortgage Revenue Bonds, Housing Choice Vouchers, and Public Housing  
10 funds. [DHCD TO CLARIFY - Ensure disbursement of resources allocated to  
11 the National Affordable Housing Trust]
- 12 • ~~encourage~~Encourage local governments to adopt local affordable housing  
13 strategies including housing trust funds, inclusionary zoning ~~(where~~  
14 ~~economically viable)~~, land trusts, payments in lieu of taxes and waivers for  
15 local impact and development fees for affordable housing.
- 16 • Target existing and new resources where possible to projects that help people  
17 of modest income live near where they work or near viable transit options.
- 18 • Continue the State's proactive emphasis on preserving homeownership in the  
19 face of the national foreclosure crisis, and plan for the longer term by helping  
20 families strengthen their household financial management and savings plans.

21 ***B. Expand housing information and policies in local comprehensive plans***

22 The location, shape, and quality of growth, transportation commuting patterns, as well as social  
23 needs and services in communities, are influenced by the availability of housing. The failure to  
24 adequately plan for housing adequate to support employment located in a jurisdiction also results  
25 in relocation of households to other jurisdictions and even other states. In fact, according to the  
26 2000 Census, Maryland has the 2nd worst commute in the country. These patterns often drive  
27 growth and development to areas with cheaper land costs, which promotes sprawl. Yet, the  
28 average cost of housing inside PFAs is generally less than outside the PFAs. Addressing housing  
29 affordability would play a significant role in smarter growth management and is critical to  
30 achieving more sustainable communities.

31 **The Task Force recommends that Maryland communities better incorporate housing**  
32 **affordability into planning activities to help guide land use, zoning, and other**  
33 **development-related decisions. Consideration should be given to including in local**  
34 **comprehensive plans housing market information, a discussion of available affordable**  
35 **housing, local development capacity, an analysis of housing availability in the context of**



employment, as well as goals and strategies to address these and related issues.

**C. Evaluate the benefits of creating community land trusts**

Community land trusts (CLTs) have the potential to create and support affordable and workforce housing. ~~The use of Community Development Block Grants (CDBG) monies may be appropriate to facilitate community land trusts.~~ [MACo TO PROVIDE MORE INFORMATION.] particularly in jurisdictions with very high housing costs. The CLT model was created approximately thirty years ago to address high housing prices in East Coast cities. However, since then, CLTs have been used in all parts of the country. According to the National Community Land Trust Network, there are currently over five thousand CLTs throughout the country.

A CLT is a nonprofit organization that owns the land under a home, but not the home itself. A homeowner must pay a nominal fee to the CLT to lease the land but owns the home in full. By removing land costs, a CLT makes it easier for a low or moderate-income person to purchase a home. An easement on the home restricts the homeowner from reselling the home above a certain price, thus keeping CLT housing affordable in perpetuity. The CLT model may also be applied to rental housing, housing cooperatives, and the preservation of family farms.

The Task Force recommends that the use of CLTs in Maryland should be studied further by the Department of Housing and Community Development, working with local governments, advocates, and the community, to determine whether CLTs can help meet Maryland's affordable housing needs. An initial report should be presented to the Task Force by July 1, 2009.

**9. Stimulate Revitalization of Existing Communities**

**A. Direct growth to ~~targeted areas such as~~older, existing communities, particularly to greyfields/brownfields, areas near transit stations, and other specially designated areas such as BRAC Zones, Enterprise Zones and Community Legacy Areas through reinvestment and/or tax credits**

Throughout Maryland, many areas are ripe for revitalization and redevelopment. Directing growth to these areas is critical to combat sprawl and encourage Smart Growth. However, revitalization and infill projects are often more costly than new construction due to land assemblage costs, existing or previous uses (including environmental matters), and other site constraints. Existing Smart Growth tools and incentives such as federal and State brownfields programs, historic tax credits, Neighborhood Business Works, and the Community Legacy Program play critical roles in stimulating growth in targeted areas, and the State has some new programs such as BRAC Zones which are designed to link BRAC growth to communities seeking revitalization. The protection of



1 these programs is critical in today's budget environment while a broader commitment of resources  
2 is fundamental in moving forward.

3 **As a Focus Area for the next phase of the Task Force's work, the Task Force will review,**  
4 **categorize, and assess the State's existing revitalization incentives. The Task Force will also**  
5 **review best practices and ideas from competing jurisdictions and around the country and**  
6 **recommend additional incentives ~~which~~that are cost-effective and economically efficient,**  
7 **yielding an acceptable return on the State's investment. A supplemental report should be**  
8 **produced by July 1, 2009.**

9 ***B. Find creative solutions to incentivize and encourage small business growth in existing***  
10 ***communities***

11 Many urban markets in Maryland, in particular, remain underserved by grocery, retail and other  
12 businesses found in more suburban and affluent areas of the ~~state~~State. Overall reinvestment and  
13 revitalization activities need to be accompanied by targeted programs and activities that can  
14 expand and sustain the growth of amenities, services, and businesses to attract new investment in  
15 such communities.

16 **As part of its work under recommendation 9(A) above, the Task Force will focus on**  
17 **revitalization incentives directed at supporting the location of small businesses in**  
18 **revitalization areas.**

19 ***C. Reauthorize the Maryland Historic Tax Credit and Remove ~~Aggregate~~ Caps***

20 One of the most powerful tools for revitalization of existing communities throughout the ~~state~~State  
21 has been the Maryland Heritage Structure Rehabilitation Tax Credit Program. By focusing only  
22 on historic structures, the program directs resources to existing communities where viable  
23 structures await rehabilitation and expensive infrastructure is already in place.

24 From 1996 to 2003, the Maryland Heritage Structure Rehabilitation Tax Credit was widely  
25 regarded as the most effective program of its type in the nation. During that period, respected  
26 economic development and planning experts described the program as Maryland's most powerful  
27 and effective Smart Growth, economic development and community revitalization tool. The  
28 rehabilitation made possible by the tax credits has proven advantages over new construction in its  
29 return on investment, increased tax revenues, job creation, energy and natural resource  
30 conservation. Ironically, this very success and demand for the credits led to changes in the program  
31 including adding competitive rankings, overall program caps, and caps on the amount of credits  
32 that could be used in any one jurisdiction. As a result, the program's effectiveness has been  
33 reduced -- in 2003, the year before these substantial limitations were imposed, 147 applications  
34 were received; in 2004, only 61 were received.

1 Unfortunately, some of Maryland’s most capable and successful historic rehabilitation developers  
2 have turned their attention to states where the state credits can be predictably obtained and easily  
3 combined with federal historic preservation credits. For example, Virginia, North Carolina,  
4 Missouri, New York, and Rhode Island do not “cap” their credit programs.

5 In addition to continuing problems resulting from the program’s restructuring, an even more  
6 fundamental issue is the looming ~~January~~July 1, 2010 sunset date for the entire credit program.

7 **The Task Force strongly recommends that the Maryland Heritage Structure Rehabilitation**  
8 **Tax Credit Program ~~program~~ be reauthorized and extended by the Governor and General**  
9 **Assembly in the 2009 Session, and that jurisdictional and aggregate caps ~~and other limiting~~**  
10 **~~factors also~~ be removed, allowing the program to continue providing an extraordinary**  
11 **return on investment for the State.**

## 13 **10. Ensure Adequate Water and Sewer for Smart Growth**

14 Water is a precious and finite resource, which must be managed to assure that future human needs  
15 can be met with sustained supplies while also maintaining healthy aquatic ecosystems. Maryland  
16 is committed to the restoration and preservation of the Chesapeake Bay, the Coastal Bays, and all  
17 its streams and rivers. It is also committed to protecting public health by assuring adequate  
18 supplies of safe drinking water.

19 Sprawling patterns of development can increase the amount of pollution entering our waters and  
20 threaten drinking water supplies. The conversion of forests, pastures and other rural uses to  
21 residential development not only destroys environmentally beneficial uses, but can also degrade  
22 water quality and impair streams by increasing the amount of impervious surfaces, which results in  
23 more runoff and associated pollution entering streams. Conventional septic systems do not  
24 remove nitrogen, which passes through the ground into the ground water and eventually becomes  
25 part of the water flowing in streams. Impervious surface from development encroaches on areas  
26 where precipitation percolates into the ground, reducing recharge of underground drinking water  
27 sources. Development on land that drains to surface drinking water sources also poses a risk.  
28 Sprawl development also results in more vehicle miles traveled, which increases nitrogen  
29 emissions to the atmosphere and the amount of nitrogen deposited onto the land and water from the  
30 atmosphere. Atmospheric sources of nitrogen are estimated to contribute approximately 30% of  
31 the nitrogen pollution loading to the State’s waters.

32 To protect the environment, compact development is preferable to sprawling development.  
33 However, providing adequate drinking water and capacity for wastewater disposal for densely  
34 populated areas poses challenges in some areas of the State.

35 The Task Force recommends the following actions to manage water and sewer for Smart Growth.

1 **A. Fund Hydrologic Studies and an Expanded Monitoring Network**

2 The Maryland Department of the Environment (MDE), which issues permits to appropriate water,  
3 must avoid allocating more water than can be sustainably taken. As demand for water increases,  
4 the limits of the resource will be approached. MDE must have accurate, comprehensive data to  
5 support management and permit decisions. The Advisory Committee on the Management and  
6 Protection of the State's Water Resources, chaired by Dr. M. Gordon Wolman, recommended that  
7 two ground water studies be completed and the network of monitoring wells and stream gauges be  
8 expanded. *Water for Maryland's Future: What We Must Do Today (2008)*. Together, these will  
9 provide the comprehensive statewide data and scientific tools needed to allow the maximum  
10 allocation of water in a sustainable fashion, without causing ecological damage. This issue affects  
11 towns and counties across the State that need more water, from the rocky regions of Western  
12 Maryland to the coastal plain of the Eastern Shore.

13 **The Task Force recommends that the State secure full funding for the hydrologic studies**  
14 **and expanded monitoring network.**

15 **B. Develop ~~and Implement~~ Nutrient Trading for Non-point sources**

16 Cleaning up the ~~Bay~~Chesapeake and Coastal Bays and the streams and rivers that feed them has  
17 been a State and local priority for decades. This will require that Maryland ~~reduce~~reduces the  
18 amount of nutrient pollution (nitrogen and phosphorus) entering the Bay by millions of pounds a  
19 year. A principal strategy for accomplishing this is the imposition of "nutrient caps" on  
20 wastewater treatment plants, which contribute about 20% of the nitrogen entering the Bay. Once a  
21 treatment plant ~~hits~~reaches its cap, it cannot expand unless it finds a way to improve its treatment  
22 or ~~offset~~offsets the excess discharge by trading or otherwise. Some wastewater treatment plants  
23 that serve Smart Growth areas will need to expand to accommodate increased population and jobs.

24 MDE issued its *Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay*  
25 *Watershed* in April 2008. As Phase I of a two-part Trading Policy, it establishes an approach for  
26 trading nutrient allowances between point sources and trading involving the removal of onsite  
27 sewage disposal systems (OSDS). A second phase of the Trading Policy, being developed by the  
28 Maryland Department of Agriculture with other State agencies, will allow trading between point  
29 sources and non-point sources. Phase II would enlarge the options for trading, potentially  
30 benefiting wastewater treatment plants that need to expand to accommodate growth.

31 **The Task Force urges that Phase II of the Trading Policy be completed and**  
32 **~~implemented~~released for comment as soon as possible, but no later than April 1, 2009.**

33 **C. Level the Playing Field by Requiring Onsite Sewage Disposal Systems, Like Onsite**  
34 **Wastewater Treatment Plants, To Reduce their Nitrogen Discharges**

Onsite sewage disposal systems (OSDS) are commonly used in large-lot, sprawl development. The average lot size for a house associated with OSDS is 7 to 8 times greater than those served by central sewer. A conventional OSDS (*i.e.*, septic ~~-tank~~system) discharges about 30 pounds of nitrogen every year. Some of this nitrogen is taken up by plants or otherwise removed during its passage through the ground and ground water, but 30% to 80% of it can reach surface water. Best Available Technology (BAT) can remove a considerable amount of the nitrogen from the wastewater before it enters the environment. Currently, those installing septic systems or subdividing land to be served by septic systems are not required to install BAT or to offset their new discharges. In contrast, discharges of nutrients from wastewater treatment plants that serve growth areas use BAT and are limited, and new plants must offset their discharges. ~~This disparity between the non-regulation of septic systems and the regulation of wastewater treatment plants undermines the State's other efforts to foster Smart Growth. Not only is development using septic systems more polluting than the same~~The net impact is that traditional septic systems pollute four times more per capita than development ~~would be within a sewerage service area, development in~~ growth areas. Development costs associated with installation of a traditional septic system are generally much less than sewer connection fees and have no continuing sewer service fee. ~~In addition, allowing septic systems to discharge excessive amounts of nitrogen runs counter to the strategies for cleaning up the Bay~~This disparity between the non-regulation of nutrient pollution from OSDSs and the regulation of wastewater treatment plants undermines the State's other efforts to foster Smart Growth.

**The Task Force recommends that this disparity be corrected. Consideration should be given by MDE to the different impact an OSDS has depending on the geology and other characteristics of the region of the State in which it is located, and the cost per pound of nitrogen removed, in determining whether to require BAT, offsets, or both in any particular area of the State.**

~~One way to accomplish this would be to modify State law and/or regulations to require that each new OSDS utilize BAT and offset the remaining nitrogen load, and that each replacement of a failed or failing OSDS utilize BAT, but not be required to offset the remaining load. Alternatively, or in addition, offsets could be used in place of BAT. As an incentive for upgrading existing systems that are functioning as designed and do not have to be replaced, such upgrades could be allowed to generate credits for trading. Correcting the disparity will improve water quality and level the Smart Growth playing field by requiring owners of onsite systems to pay a portion of the costs related to their use of the State's groundwater for sewage disposal.~~

**D. MDE Should Convene a Stakeholder Group to Discuss Ways to Give Priority in Allocations of Ground Water to Municipalities that Need Additional Water to Support the Desired Densities**

A new law, HB 1423 (2008), allows MDE, when appropriating ground water, to give priority to public water systems that serve certain municipalities in Carroll, Frederick, or Washington

Counties, provided it does not jeopardize the State's natural resources. MDE is authorized to adopt regulations to implement this practice.

**The Task Force recommends that MDE convene a stakeholder group to discuss the adoption of regulations. Aspects of State water law, if any, that hamper implementation of this practice and options for eliminating barriers to implementation of new regulations should be identified.**

**E. MDE Should Convene Stakeholder Groups to Discuss Ways to Reuse Water**

Water reuse offers an opportunity to reduce the demand for drinking water and can also reduce the amount of pollution entering the environment.

**The Task Force recommends that MDE carefully review existing standards and the programs of other states to develop policies and regulations that maximize opportunity for water reuse without compromising public health. In addition, MDE should explore the use of State funds to help jurisdictions acquire rights for land application of treated wastewater. A preliminary report should be submitted to the Task Force for further review and comment by July 1, 2009.**

**11. Incorporate Climate Change into Growth Planning**

There is scientific consensus that climate change and global warming are occurring, and the impacts of climate change and sea level rise will have far reaching implications for coastal areas in Maryland. Research has shown that effective Smart Growth policies can effect climate change issues, by helping reduce our carbon footprint, decreasing transportation trips, and avoiding coastal hazard areas. Due to its geography and geology, the Chesapeake Bay region is ranked the third most vulnerable to sea level rise, behind Louisiana and Southern Florida. In addition to causing coastal inundation, climate change is likely to increase the risk of storm damage throughout Maryland. ~~Maryland has joined the Regional Greenhouse Gas Initiative (RGGI), a cooperative effort by ten northeastern and Mid-Atlantic states to reduce carbon dioxide emissions from electricity generating plants. Maryland is also taking other aggressive action to reduce its carbon footprint, but some of the effects of climate change will occur even if the level of greenhouse gases is stabilized. In this century, the government will face difficult decisions regarding public sector infrastructure (i.e., roads, bridges, airports, wastewater treatment facilities, and municipal water systems) located in threatened areas.~~

~~**A. Add Climate Change Considerations to Integrated Land Use Planning** State agencies and local governments will increasingly be called upon to take action to protect human habitat and infrastructure from future risks. The State can accomplish this by taking steps to effectively reduce the impact to existing built environments by requiring that public and private structures be elevated and designed to minimize the risk of flood and storm damage, and to avoid future impact by directing new growth and development away from areas vulnerable to increased flooding.~~

The Task Force ~~recommends that, in coordination with State agencies and the State's Climate Change Commission, climate change considerations should be integrated into building and trade codes, and comprehensive plans.~~ is aware that Governor O'Malley established the Maryland Commission on Climate Change by Executive Order. The Commission issued a report, *Climate Action Plan*, in August 2008. The report identified numerous actions that could be taken to mitigate the effects of climate change or respond and adapt to those changes. Some of these actions relate to land use and patterns of growth.

~~***B. Develop and Disseminate Information and Planning Tools regarding the Impacts of Sea Level Rise and Storm Damage***~~

~~All levels of government will want to avoid the adverse impact of sea level rise and storm damage, and to minimize the damage that cannot be avoided. Decisions about whether to upgrade vulnerable existing infrastructure and where to locate new infrastructure should be based on the best available information.~~

~~The Task Force recommends that the State develop and disseminate information and provide tools that planners could use to determine where infrastructure is or would be at risk and the economics of protecting, moving, or replacing it.~~

~~***C. Develop Guidance and a Protocol for Evaluating the Greenhouse Gas Impact of Major Capital Projects***~~

~~[ADDITIONAL BACKGROUND TO BE INSERTED]~~

~~The State should develop, for its agencies and local jurisdictions sponsoring large capital projects, guidance to use in evaluating the greenhouse gas impact of major capital projects. Once the guidance is issued, State and local major capital projects, such as major road construction or modifications and public school construction projects, should be evaluated for the resulting transportation and land use greenhouse gas emissions. The analysis should include a build / no build analysis and an examination of alternatives with lower greenhouse gas emissions.~~

In its next phase of work, the Task Force will review the Climate Action Plan and consider whether to make growth and development-related recommendations concerning the actions identified in the Plan.

## **12. Promote Preparation and Adoption of State Development Plan, State Housing Plan, and State Transportation Plan**

~~The~~ Among its responsibilities, the Task Force is charged with determining the parameters for a State Development Plan, a State Housing Plan, and a State Transportation Plan, and with



determining how these plans work together with local land use plans. Since 1974, Maryland law has required the preparation of a State Development Plan for submission to the Governor by MDP, but no such integrated plan has ever been formally prepared. Governor O'Malley has requested that such a Plan be prepared in furtherance of this long-standing requirement. At present, Maryland law has no provision for a State Housing Plan, nor does it require the preparation of a State Transportation Plan (although MDOT prepares a similarly-named document to meet federal requirements). Nonetheless, the Task Force sees the value in the preparation of such Plans to help guide the State's policy in these vital areas.

MDP, DHCD, and MDOT have presented the Task Force with proposed parameters for ~~the~~their respective ~~plans~~Plans, which have been ~~adopted~~preliminarily reviewed by the Task Force. ~~as a basis for future development of the Plans themselves. These draft parameters are contained in~~ Appendices [ ].

The three Departments and the Task Force ~~agree~~have agreed that the State Housing Plan and State Transportation Plan, should ultimately be elements under the ~~larger~~-umbrella of the overall State Development Plan. ~~Those parameters, which will guide the development of the Plans themselves, are contained in~~ Appendices [ ]. Accordingly, MDP, DHCD, and MDOT have been cooperating to synthesize the parameters in anticipation of the process of Plan preparation. Development of a full set of parameters is a complex, ongoing, and dynamic process which the Task Force will continue to pursue in the next phase of its work. Meanwhile, the Departments will commence work on the Plans using the draft parameters as a guide, recognizing that they are likely to be amended and adjusted as the Plans themselves are developed.

~~As noted, the Task Force's charge was to develop parameters for the Plans, not~~ Very few states have undertaken to prepare statewide development plans, and therefore Maryland finds itself in the vanguard of states aspiring to such a comprehensive and coherent assessment of statewide development and land use issues. To inform its work, the Task Force expects to study approaches taken by other states to their state development plans. The Task Force recognizes that development of the Plans themselves. Actual Plan development will be a considerable and time-consuming undertaking by the lead State agency for each Plan, and will require the input and involvement of many stakeholders, including other agencies of ~~state~~State government, local governments, interest groups, and the public at large.

The Task Force will continue to work with MDP, DHCD, and MDOT on refining the parameters development of their respective Plans and will provide by providing guidance, feedback, and support as the Plans are fully developed prepared. This critical component of Maryland's future land use planning will be a Focus Area for the balance of the Task Force's existence work.

### **13. Identify Inconsistent and/or Conflicting Laws, Regulations, and Policies**

As in any complex governmental environment, where different entities regulate different aspects of the same ~~conditions~~activities, opportunities for conflicting or inconsistent rules, regulations, and policies exist. At the very least, these can lead to inefficiencies ~~while divergent~~at the worst. important public policies ~~are recognized and reconciled~~could be subverted. The Task Force has asked local governments to identify, ~~from their perspective~~, any such conflicts or inconsistencies they perceive in ~~relevant~~ State law, regulation or policy ~~which might be resolved through discussion with the State and its agencies. A number of these have been identified by~~that relate to land use, and local government representatives on the Task Force and their respective organizations, ~~and they are being reviewed by the State agencies involved~~have identified a number for consideration. The validity and seriousness of these issues has not yet been determined or agreed upon, and time constraints have not permitted a full discussion and analysis prior to issuance of this report.

**The Task Force recommends that ~~a workgroup, including state and~~MDP, MDE, and other relevant agencies meet with local government representatives ~~and other stakeholders as appropriate, be convened~~ to evaluate potential internal conflicts and/or inefficiencies in State land use law, regulations, and policy, including but not limited to those identified to date. ~~The workgroup~~Findings should ~~report its findings~~be reported back to the Task Force for further discussion, evaluation and action, if necessary, by July 1, 2009.**

## **14. Promote Smart Growth Education and Outreach**

Many efforts have been made in the past to teach Maryland's citizens about Smart Growth, including the Maryland Department of Planning's 2007 "A Shore for Tomorrow" and "This is Smart Growth"; there are also 28 Models and Guidelines available from ~~the Maryland Department of Planning~~MDP which detail many different aspects of Smart Growth. However, the Task Force believes that there should be a renewed effort and more focus on education, both about the issues themselves and about Maryland's leadership role in Smart Growth nationwide.

**A. Create a broad-based ~~approach~~educational and outreach program about Smart Growth ~~and growth/development issues, developed collaboratively between~~by State and local government, including preparation of a Smart Growth curriculum**

Many State agencies ~~within State Government individually~~ have tools and programs that can ~~promote Smart Growth development. be used to promote Smart Growth effectively. Further,~~ Maryland is fortunate to have ready access to the National Center for Smart Growth (NCSG), an international leader in Smart Growth policy development and education located at the University of Maryland College Park. A broad-based approach to outreach ~~will need to include cross-agency integration of an overall education effort. State and local governments should work together to ensure that relevant plans and programs are included in order to best address that localities educational needs.~~



**B. Encourage the reinvigoration of the Maryland Planning Commissioners Association and link to the Maryland American Planning Association**

2008 marks the 25<sup>th</sup> anniversary of the ~~MPCA~~. After a hiatus MPCA is now meeting and planning its work program. This group should have the best access to Smart Growth tools and be kept up-to-date on growth and development issues in order to be able to effectively work with their local Planning Commissions to promote Smart Growth.

The Task Force supports the reinvigoration of the MPCA as a valuable asset to Maryland's Smart Growth agenda.

~~C. Form a Task Force workgroup to create a Smart Growth curriculum~~ should include multiple State agencies working with local governments and other available resources, particularly the NCSG. Practical time constraints prevented the Task Force from engaging in any detailed discussion about a Smart Growth education program might contain or how it might be utilized, though the Task Force did establish the desirability of such a curriculum.

As a Focus Area ~~after delivery of this initial report~~ during the balance of its work, the Task Force will create an Education Workgroup to review existing Smart Growth educational materials as well as past efforts. The Workgroup, including Task Force members, ~~state~~ State and local agency representatives, ~~and the National Center for Smart Growth, and additional~~ educators to be recruited, ~~will help~~ should jointly design a Smart Growth curriculum to educate the public about the growth and development challenges ~~we face together as a State~~ faced by Marylanders. Plans and programs should be made relevant to address the specific and local needs of individual jurisdictions.

**B. Encourage the reinvigoration of the Maryland Planning Commissioners Association and link to the Maryland American Planning Association**

2008 marks the 25<sup>th</sup> anniversary of the Maryland Planning Commissioners Association (MPCA). After a hiatus, MPCA is now meeting and planning its work program. This important group should have the best access to Smart Growth tools and be kept updated on growth and development issues in order to be able to effectively work with their local Planning Commissions to promote Smart and Sustainable Growth.

The Task Force supports the reinvigoration of the MPCA as a valuable component of Maryland's Smart Growth agenda.

**15. Re-Establish a Broad-Based Statewide Planning Commission Advisory Committee**

1 To its credit, Maryland had the first state planning commission in the nation, constituted in 1933.  
2 Yet, that commission's successor, the State Economic Growth, Resource Protection, & Planning  
3 Commission, was dissolved by statute in 2003 leaving the State without an enduring, broad-based  
4 public body charged with an ongoing role in the State's growth and development policy. Even in  
5 its short existence, the Task Force has proven the value of having ~~such a body~~ a statewide forum  
6 where planning issues are discussed, common ground is identified, and differences are clarified.  
7 In addition to making the recommendations contained in this initial report, the Task Force has also  
8 served as ~~an official forum~~ a valuable venue in which diverse interests have convened to discuss  
9 critical growth, development, and land use issues. The Task Force's enabling legislation will  
10 expire in December 2010, however, and the State would again be left without a  
11 ~~state~~ State-sanctioned venue for discussion and resolution of these issues.

12 **The Task Force recommends that the State reconstitute a broad-based statewide planning**  
13 **~~board or~~ advisory commission including ~~state~~ State and local officials, interest groups, and**  
14 **~~private citizens, and others. Among other tasks, this, This group should ~~oversee~~ provide~~**  
15 **advice and input on the further development and implementation of the State Development**  
16 **Plan and also make recommendations on the development and alignment of resources that**  
17 **affect growth and development in Maryland. Importantly, the group will serve as an**  
18 **officially-recognized forum for discussion of growth and development issues by a diverse**  
19 **group of stakeholders. The entity should be created by statute prior to the expiration of the**  
20 **Task Force in December 2010.**

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22 --end--  
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